

producer or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a producer under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

(c) Prompt payment interest from AMS will not be applicable.

#### **§ 81.15 Appeals.**

Any producer who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

#### **§ 81.16 Refunds; joint and several liability.**

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any producer shall be refunded to AMS together with interest.

(b) All producers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any producer under this part if AMS determines that payments or other assistance were provided to a producer who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available. Such interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS was at fault for the overpayment.

(d) Interest allowable in favor of AMS in accordance with paragraph (c) of this section may be waived when

there was no intentional noncompliance on the part of the producer, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for those claims which are addressed in 7 CFR part 792.

(f) Producers must refund to AMS any excess payments, as determined by AMS, with respect to such application.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the producer, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest.

#### **§ 81.17 Death, incompetency, or disappearance.**

In the case of death, incompetency, disappearance, or dissolution of a prune/plum producer that is eligible to receive benefits in accordance with this part, such person or persons who would, under 7 CFR part 707 be eligible for payments and benefits covered by that part, may receive the tree-removal benefits otherwise due the actual producer.

### **PART 82—CLINGSTONE PEACH DIVERSION PROGRAM**

#### **Sec.**

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AUTHORITY: 7 U.S.C. 612c.

## § 82.1

## 7 CFR Ch. I (1–1–10 Edition)

SOURCE: 70 FR 67312, Nov. 4, 2005, unless otherwise noted.

### § 82.1 Applicability.

Pursuant to the authority conferred by Section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c) (Section 32), the Agricultural Marketing Service (AMS) will make payment to California growers who divert clingstone peaches by removing trees on which the fruit is produced in accordance with the terms and conditions set forth herein.

### § 82.2 Administration.

The program will be administered under the general direction and supervision of the Deputy Administrator, Fruit and Vegetable Programs, AMS, United States Department of Agriculture (USDA), and will be implemented by the California Canning Peach Association (CCPA). The CCPA, or its authorized representatives, does not have authority to modify or waive any of the provisions of this subpart. The Administrator or delegatee, in the Administrator's or delegatee's sole discretion can modify deadlines to serve the goals of the program. In all cases, payments under this part are subject to the availability of funds.

### § 82.3 Definitions.

(a) *Administrator* means the Administrator of AMS.

(b) *AMS* means the Agricultural Marketing Service of the U.S. Department of Agriculture.

(c) *Application* means "Application for Clingstone Peach Tree Removal Program."

(d) *Calendar year* means the 12-month period beginning January 1 and ending the following December 31.

(e) *CCPA* means the California Canning Peach Association, a grower-owned marketing and bargaining cooperative representing the clingstone peach industry in California.

(f) *Diversion* means the removal of clingstone peach trees after approval of applications by the CCPA.

(g) *Grower* means an individual, partnership, association, or corporation in the State of California who grows clingstone peaches for canning.

(h) *Removal or removed* means that the clingstone peach trees are no longer standing and capable of producing a crop, and the roots of the trees have been removed. The grower can accomplish removal by any means the grower desires. Grafting another type of tree to the rootstock remaining after removing the clingstone peach tree will not qualify as removal under this program.

### § 82.4 Length of program.

This program is effective November 5, 2005, through November 9, 2015. Growers diverting clingstone peaches by removing clingstone peach trees must complete the diversion no later than June 1, 2006.

### § 82.5 General requirements.

(a) To be eligible for this program, the trees to be removed must be fruit-bearing and have been planted after the 1987 and before the 2003 calendar years. Abandoned orchards and dead trees will not qualify. The block of trees for removal must be easily definable by separations from other blocks of eligible trees and contain at least 1,000 eligible trees or an entire orchard. Clingstone peach tree removal shall not take place until the grower has been informed in writing that the grower's application has been approved.

(b) Any grower participating in this program must agree not to replant clingstone peach trees on the land cleared under this program through June 1, 2016. Participants bear responsibility for ensuring that trees are not replanted, whether by themselves, by successors to the land, or by any other person, until after June 1, 2016. If trees are replanted before June 1, 2016, by any persons, participants must refund all USDA payments, with interest, made in connection with this tree removal program.

### § 82.6 Rate of payment; total payments.

(a) Applications will be processed on a first-come, first-served basis. Growers will be paid \$100 per ton based on their actual 2005 deliveries of clingstone peaches to processors from those acres of clingstone peach trees removed under this program, except

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that, regardless of actual 2005 deliveries, growers will receive a minimum of \$500 per acre and a maximum of \$1,700 per acre.

(b) Payment under paragraph (a) of this section will only be made after tree removal has been verified by the staff of the CCPA.

(c) The \$100 per ton payment is intended to cover the costs of tree removal. USDA will not make any other payment with respect to such removals. The grower will be responsible for arranging, requesting, and paying for the tree removal in the specified acreage.

(d) Total payments under this program are limited to not more than \$5,000,000 of Section 32 funds. No additional expenditures shall be made unless the Administrator or delegatee in their sole and exclusive discretion shall, in writing, declare otherwise.

### § 82.7 Eligibility for payment.

(a) If total applications for payment do not exceed \$5,000,000, less administration costs, payments, as set forth in § 82.6, will be made under this program to any grower of clingstone peaches who complies with the requirements in § 82.8 and all other terms and conditions in this part.

(b) If applications for participation in the program authorized by this part exceed \$5,000,000, less administration costs, the CCPA will approve the applications (subject to the requirements in § 82.8) in the order in which the completed applications are received in the CCPA office to the extent that funds are available. Applications received after total outlays exceed the amount of money available will be denied.

### § 82.8 Application and approval for participation.

(a) Applications will be reviewed for program compliance and approved or disapproved by CCPA office personnel.

(b) Applications for participation in the Clingstone Peach Diversion Program can be obtained from the CCPA office at 2300 River Plaza Drive, Suite 110, Sacramento, CA 95833; Telephone: (916) 925-9131; Fax: (916) 925-9030; at 335 Teegarden Avenue, Suite A, Yuba City, CA 95991; Telephone: (530) 673-8526; Fax: (530) 673-2673; or at 1704 Herndon Road,

Ceres, CA 95307; Telephone: (209) 537-0715; Fax: (209) 537-1043.

(c) Any grower desiring to participate in the Clingstone Peach Diversion Program must file an application with the CCPA prior to November 30, 2005. The application shall be accompanied by a copy of any two of the following four documents: Plot Map from the County Hall of Records; Irrigation Tax Bill; County Property Tax Bill; or any other documents containing an Assessor's Parcel Number. Such application shall include at least the following information:

(1) The name, address, telephone number, and tax identification number or social security number of the grower;

(2) The location and amount of acreage to be diverted;

(3) The 2005 clingstone peach production from the acreage to be diverted;

(4) If the land with respect to which the clingstone peach trees will be destroyed is subject to a mortgage, statutory lien, or other equity interest, the grower must obtain from the holder of such interest a written statement that such party agrees to the enrollment of such land in this program to the extent determined necessary by AMS. Obtaining such assent shall be the responsibility of the applicant who shall alone bear any responsibilities which may extend to such third parties;

(5) A statement that the applicant agrees to comply with all of the regulations established for the clingstone peach diversion program;

(6) The applicant shall sign the application certifying that the information contained in the application is true and correct;

(7) The year that the clingstone peach acreage to be diverted was planted;

(8) The names of the processors who received the clingstone peaches from the grower in 2005.

(d) After the CCPA receives the applications, it shall review them to determine whether all the required information has been provided and that the information is correct.

(e) If the deliveries off the acreage to be removed in such applications, multiplied by \$100 per ton (for actual 2005 deliveries on these acres, but within the

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constraints of a minimum payment of \$500 per acre and a maximum payment of \$1,700 per acre), exceed the amount of funds available for the diversion program, each grower's application will be considered in the order in which they are received at the CCPA offices.

(f) After the application reviews and confirmation of eligible trees are completed, the CCPA shall notify the applicant, in writing, as to whether or not the application has been approved and the tonnage approved for payment after removal. If an application is not approved, the notification shall specify the reason(s) for disapproval.

### **§ 82.9 Inspection and certification of diversion.**

When the removal of the clingstone peach trees is complete, the grower will notify the CCPA on a form provided by the CCPA. The CCPA will certify that the trees approved for removal from the acreage have been removed, and notify AMS.

### **§ 82.10 Claim for payment.**

To obtain payment for the trees removed, the grower must submit to the CCPA by July 31, 2006, a completed form provided by the CCPA. Such form shall include the CCPA's certification that the qualifying trees from the acreage have been removed. AMS will then issue a check to the grower in the amount of \$100 per eligible ton removed consistent with the minimum and maximum payments per acre earlier specified in this part.

### **§ 82.11 Compliance with program provisions.**

If USDA or the CCPA determines that any provision of this part have not been complied with by the grower, the grower will not be entitled to diversion payments in connection with tree removal. If a grower does not comply with all the terms of this part, including the requirement specified in § 82.5(b), the grower must refund any payment made in connection with this program, and will also be liable for any other damages incurred as a result of such failure. The USDA may deny any grower the right to participate in this program or the right to receive payments in connection with any diversion

previously made under this program, or both, if the USDA determines that:

(a) The grower has failed to properly remove the clingstone peach trees from the applicable acreage, regardless of whether such failure was caused directly by the grower or by any other person or persons;

(b) The grower has not acted in good faith, or has engaged in a scheme, fraud, or device, in connection with any activity under this program; or

(c) The grower has failed to discharge fully any obligation assumed by him or her under this program.

### **§ 82.12 Inspection of premises.**

The grower must permit authorized representatives of USDA or the CCPA, at any reasonable time, to have access to their premises to inspect and examine the acreage where the trees were removed as well as any records pertaining to that acreage to determine compliance with the provisions of this part.

### **§ 82.13 Records and accounts.**

(a) The growers participating in this program must keep accurate records and accounts showing the details relative to the clingstone peach tree removal, including the contract entered into with any firm removing the trees, as well as the invoices.

(b) The growers must permit authorized representatives of USDA, the CCPA, and the Government Accountability Office at any reasonable time to inspect, examine, and make copies of such records and accounts to determine compliance with provisions of this part. Such records and accounts must be retained for ten years after the date of payment to the grower under the program, or for ten years after the date of any audit of records by USDA, whichever is later. Any destruction of records by the grower at any time will be at the risk of the grower when there is reason to know, believe, or suspect that matters may be or could be in dispute or remain in dispute.

### **§ 82.14 Offset, assignment, and prompt payment.**

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of

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title under State law, and without regard to any claim or lien against the crop proceeds thereof in favor of the grower or any other creditors except agencies of the U.S. Government.

(b) Payments which are earned by a grower under this program may be assigned in the same manner as allowed under the provisions of 7 CFR part 1404.

### § 82.15 Appeals.

Any grower who is dissatisfied with a determination made pursuant to this part may make a request for reconsideration or appeal of such determination. The Deputy Administrator of Fruit and Vegetable Programs shall establish the procedure for such appeals.

### § 82.16 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application of this part, and if any refund of a payment to AMS shall otherwise become due in connection with the application of this part, all payments made under this part to any grower shall be refunded to AMS together with interest.

(b) All growers signing an application for payment as having an interest in such payment shall be jointly and severally liable for any refund, including related charges, that is determined to be due for any reason under the terms and conditions of the application of this part.

(c) Interest shall be applicable to refunds required of any grower under this part if AMS determines that payments or other assistance were provided to a grower who was not eligible for such assistance. Such interest shall be charged at the rate of interest that the United States Treasury charges the Commodity Credit Corporation (CCC) for funds, as of the date AMS made benefits available to such grower. Such

interest shall accrue from the date of repayment or the date interest increases as determined in accordance with applicable regulations. AMS may waive the accrual of interest if AMS determines that the cause of the erroneous determination was not due to any action of the grower.

(d) Interest determined in accordance with paragraph (c) of this section may be waived on refunds required of the grower when there was no intentional noncompliance on the part of the grower, as determined by AMS. Such decision to waive or not waive the interest shall be at the discretion of the Administrator or delegatee.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed for, those claims which are addressed in 14 CFR part 1403.

(f) Growers must refund to AMS any excess payments, as determined by AMS, with respect to such application. Such determinations shall be made by the Administrator or delegatee.

(g) In the event that a benefit under this part was provided as the result of erroneous information provided by the grower, or was erroneously or improperly paid for any other reason, the benefit must be repaid with any applicable interest, subject to paragraphs (c) and (d) of § 82.6.

### § 82.17 Death, incompetency, or disappearance.

In the case of death, incompetency, disappearance, or dissolution of a clingstone peach grower that is eligible to receive benefits in accordance with this part, any person or persons who will, under 7 CFR part 707 of this title, be eligible for payments and benefits covered by this part, may receive such benefits otherwise due the actual producer, as determined appropriate by AMS.